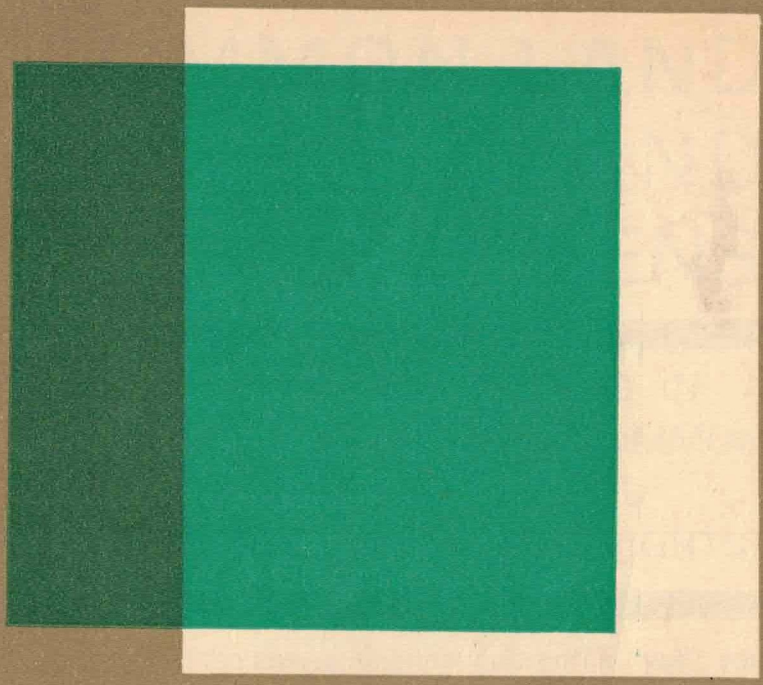

COMMON LAND

Read this booklet to find out how to preserve your rights and interests.

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COMMON LAND AND TOWN AND VILLAGE GREENS

ARE YOU INTERESTED IN LAND WHICH IS A COMMON OR A GREEN? DO YOU POSSESS COMMON RIGHTS?

If the answer to either question is "yes", you should study this leaflet carefully. It is a brief guide to the COMMONS REGISTRATION ACT 1965. *You may need to make an application under this Act in order to safeguard your interests.* More detailed information about the Act is contained in Ministry of Land and Natural Resources Circular No. 2/65 published by Her Majesty's Stationery Office at 1s. 6d. net and obtainable from HMSO direct or through booksellers.

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THE PURPOSE OF THE ACT

1 The purpose is to find out and register the facts about the estimated 1½ million acres of common land (and town and village greens) in England and Wales. On many commons it is not known for certain who owns the common rights or who owns the common itself. There may be doubts about where the boundary of the common runs, or even whether the land is common at all. Similar doubts exist about many village greens. By putting an end to these doubts the Act will enable better use to be made of the commons and greens.

HOW THE ACT WILL WORK

2 County councils and county borough councils will act as commons registration authorities (in London the Greater London Council will act). On 1st January 1967, these authorities will open registers in which they will register applications from individual persons, bodies and authorities, made three years from that date.

3 You will be able to apply to your commons registration authority for the registration as a common, or as a town or village green, of land which you believe is of this kind—even though you may have no *legal* interest in the land. If you possess rights of common, you will need to apply to your commons registration authority to have the rights registered (see paragraph 4 below).

Claims to the ownership of commons and greens, which are not already registered at the Land Registry under the Land Registration Acts 1925 and 1936, will be registrable under the Commons Registration Act 1965. If you are the owner of such a common or green, you should apply to your commons registration authority for your claim to ownership of the land to be registered.

4 *It is essential that all commons and greens should be registered under the Act. If it is not registered under the Act, the land will, normally, cease to*

be common or a green. Similarly, if you possess rights of common which you wish to keep, it is vital that you should apply for the rights to be registered. If you fail to apply, the rights will be lost—unless the rights already happen to be registered under the Land Registration Acts 1925 and 1936 (which is unlikely), or are over land exempted from the registration provisions of the Act (see paragraph 10 below).

5 All registrations will be open to objection by anyone during a period of two years (see paragraph 8). If the registration is not objected to, it will automatically become final at the end of the period during which an objection could have been made.

6 Where an objection is made to a registration, time will be allowed for the applicant and the objector to settle their difference by agreement between themselves. If they fail to do so, the commons registration authority will refer the dispute to a Commons Commissioner—a barrister or solicitor of at least seven years' standing appointed by the Lord Chancellor. The decision of the Commons Commissioner will be final, subject to appeal—on a point of law only—to the High Court. Where the case involves difficult questions of agricultural practice, the Commons Commissioner may be assisted by an Assessor possessing the necessary local and technical knowledge.

7 A Commons Commissioner will have power, if he thinks fit, to require one party to the proceedings to pay the costs of the other party. This power and the need for a statutory declaration (see paragraph 16 below) are intended to deter the making and pressing of false, frivolous or vexatious applications and objections.

8 There will be no fee for objections but they must be made within a certain period. If you wish to object to a registration made between 1st January 1967, and 30th June 1968, your objection must be sent to your commons registration authority during the period 1st October 1968 to 30th September 1970. If the registration is made between

1st July 1968 and 1st January 1970, your objection should be sent in during the period 1st April 1970 to 31st March 1972.

9 When the time comes, notices will appear in your local newspapers and on public notice boards telling of the applications which have been registered and inviting objections to be sent to the commons registration authority. You will be able to inspect the entries in the registers at the offices of your commons registration authority. Your local council will also be sent copies of all the entries in the registers (both applications and objections) which concern land in your area. You will thus be able to inspect these copies at the local offices of your borough, urban district, rural district or parish council.

10 The New Forest, Epping Forest and the Forest of Dean do not come within the scope of the Act. Before the start of registration, the Minister may order that other areas shall be specially exempted from registration under the Act—on application made to him by anyone. The Minister will not make an order of exemption unless it appears to him, among other things, that no rights of common have been exercised over the land for at least 30 years. You will be given an opportunity to object to any applications for exemption in your area—some time during the year 1966 they will be advertised in local newspapers and notices will appear on public notice boards.

HOW AND WHEN TO APPLY

11 A period of three years will be allowed for the making of applications for registration. This period is expected to start on 1st January 1967 and end on 1st January, 1970.

12 You will have to fill up a form of application. If you ask them to do so, the commons registration

authority will send you an application form when stocks are available. *These forms will not be available until December 1966.*

13 *Applications for registration will not be accepted by commons registration authorities before they open their registers.*

14 During the first half of the registration period (that is between 1st January 1967, and 30th June 1968) no charge will be made for registering applications. But in most cases there will be a charge of £5 for each application received in the second half of the registration period (that is between 1st July 1968 and 1st January 1970). The fee will not, however, be payable if you send the commons registration authority a notice during the first half of the registration period of your intention to claim.

15 You are therefore recommended to apply as soon after 1st January 1967 as possible. If you do not expect to be able to send in your application before 30th June 1968, you should let your commons registration authority know *before that date* (that is during the first half of the registration period) of your intention to apply during the second half of the registration period (this will avoid your having to pay the fee of £5).

16 Your application must be supported by a statutory declaration. This is a written statement, which will be incorporated in the application form, of your belief in the truth of the facts upon which you base your application for registration. The statutory declaration must be made before a Commissioner for Oaths (a solicitor specially appointed to administer oaths). There will almost certainly be several in your nearest town, and your local Citizens' Advice Bureau should be able to give you the name and address of one. A fee of 5s. is payable to the Commissioner, or 7s. if there is a plan accompanying your application. If anyone makes a statutory declaration in whose truth he does not believe he renders himself liable to prosecution.

WHAT YOU CAN DO BEFORE REGISTRATION STARTS

17 You may have it in mind, when the time comes, to apply for the registration of some land on the grounds that it has long since been accepted as a common (or a green). If you think that your application may be objected to you can be bringing together the facts and the arguments in support of your application. You can also be satisfying yourself about the precise boundaries of the land. If you are unwilling to make the application yourself, you may wish to pass on to your local council (or local amenity society, if there is one) your evidence or knowledge concerning the land.

18 If you intend to apply for the registration of common rights, you would be well advised to begin thinking about the precise nature and extent of the rights which you possess. If your application will be for rights of common of pasture, you will be required to state in your application the numbers and kinds of stock which you believe yourself entitled to turn out on the common (or green). It will not be sufficient merely for you to give, for example, the number of "gaits" or to refer to "the number levant and couchant". For the purposes of registration, you will have to state the actual numbers and kinds of stock, even where your right of grazing (though limited) is not at present limited by a definite number. This will enable the extent of each commoner's grazing rights to be easily found out by looking at the commons register—the register will be open to public inspection during normal office hours, from the opening of registration onwards.

19 When applying, you will be asked to provide a map of the land (the common or green) over which you are claiming rights. You can do this by plan, by reference to the Ordnance Map or, if the land is already registered, by reference to the description in the register. You will therefore wish to be considering the boundaries of the area over

which you believe yourself entitled to exercise common rights.

20 Your rights of common will probably be attached to (or run with) a farm, holding or other land. If your rights are of this kind, you will be asked to include in your application a description of the property to which the rights are attached. You can do this in any of the ways indicated in paragraph 19. You may like to start preparations now.

21 *You are strongly recommended to discuss with the other commoners the nature and extent of the applications which each of you will be making when the time comes. If you can all reach agreement beforehand, it will reduce the risk of disputes having to be referred for settlement later on by a Commons Commissioner. Where registrations are not formally objected to under the Act, the effect will be to shorten the registration process and save expense and local trouble.*

22 *In some areas, before the start of registration, it may be possible for a land agent of the Ministry of Agriculture, Fisheries and Food to attend informal, unofficial meetings of commoners (and other persons interested) for the purpose of giving general advice on the Act and helping the commoners to reach agreement among themselves. You are recommended to watch out for the public notices of such meetings and to go along if you can.*

SOME OF YOUR QUESTIONS ANSWERED

Questions 1-9 concern all intending applicants

1 Q What is meant by "common land" and "town or village green"?

A Both expressions are defined in the Act. Briefly, "common land" means land subject to rights of common (see the answer to question 14), and also waste land of a manor not subject to rights of common.

"Town or village green" means land that has been allotted by or under any Act for the exercise or recreation of the inhabitants of any locality, or any land on which such inhabitants have a customary right to indulge in lawful sports and pastimes, or have in fact done so as of right for not less than 20 years. (Recreation grounds and similar public open spaces will not normally be included.)

2 Q To which commons registration authority should I apply?

A Normally, you should apply to the commons registration authority in whose area the land is situated. This will mean sending your application to the offices of the county council (or county borough council if the land is in a county borough). In Greater London, you should apply to the Greater London Council.

Any local departures from this general rule will be advertised in the district.

3 Q May I make application by letter?

A No. You must complete the proper form. Your commons registration authority will send you a form of application at the end of 1966, if you ask them.

4 Q If my application is made in the proper form and accompanied by the necessary particulars and declaration, will the commons registration authority register it?

A Yes, except (1) if your application is for the regis-

tration of land as a common (or a green) and the same land has already been registered as such under the Act (see Question 11 below); or (2) if you are claiming the ownership of land which is already registered at Land Registry.

5 Q How will I know if someone has objected to the registration made as a result of my application?

A The commons registration authority will write and let you know the name and address of any objector and the grounds of the objection.

6 Q I have a private right of way across a common to my house on the other side. Is this right affected by the Act?

A No. But there will be provision enabling you to apply to the commons registration authority (once the common is registered) for your right to be noted in the register. Such a note in the register will have no legal effect; and it will not be advertised or be subject to objection under the Act. Other kinds of interests and rights (other than rights of common) which affect land included in the registers may also be *noted* in this way. Examples are: mineral rights, sporting rights and easements. The purpose of these notes in the register is to enable persons with noted interests to be told about any future proposals affecting the common; for example, a scheme to improve the land. Such rights and interests will only, however, be noted on the register if they are enjoyed by some person *other* than the owner of the soil of the common. If they are enjoyed by the soil-owner they are part of his rights as owner, and —once he is registered as such—they do not need to be specially mentioned.

7 Q Will it be possible for public footpaths across common land to be registered or noted on the registers?

A No. These are not affected by the Act and arrangements have already been made—under the National Parks and Access to the Countryside Act, 1949—for all public footpaths to be recorded on definitive maps.

8 Q As a member of the general public, I have the right to walk over a particular common near my home. May I apply for this right to be registered or noted on the registers?

A No. The only rights which will be registered are rights of common: these do not include general rights of access. Where there is a general right of access to a common, the Ministry will arrange for this fact to be noted on the register at a later stage.

9 Q Where can I obtain further advice?

A A more detailed explanation is given in the Ministry of Land and Natural Resources Circular No. 2/65 referred to at the beginning of this leaflet. The commons registration authority or your local council will be able to give you general advice. If you hold common rights, you are recommended to get together with the other commoners, or seek the advice of your commoners' association, if there is one. The Citizens' Advice Bureaux (they probably have a branch in your local town) will also be able to help you with general advice, e.g. on how to fill up the form of application. If you require legal advice you are recommended to consult a solicitor.

Questions 10-13 concern especially persons intending to apply for the registration of land as a common or town or village green

10 Q How can I make sure that the common (or green) in which I am interested has been registered under the Act?

A You should call at the offices of your borough, urban district, rural district or parish council, where you will be able to inspect copies of all entries made by the commons registration authority in its registers.

Alternatively, you can inspect the registers themselves at the offices of the commons registration authority.

11 Q If when I apply for the registration of land as a common (or a green) the same land has already been registered, will the commons registration authority register my own application?

A No. But they will *note* your application in the register and notify you of any objections to the registration of the land.

12 Q Can I apply for land to be registered as a common (or as a green) even though I do not possess rights of common over the land and do not have any *legal* interest in the land whatsoever?

A Yes, provided you have genuine grounds for believing that the land is common (or a green). Application can also be made by local authorities, and by public or private bodies or societies who do not themselves possess a legal interest in the land.

13 Q If land becomes finally registered as common (or as a green), will the entry in the commons register be legal, conclusive evidence that it is common (or a green)?

A Yes.

Questions 14-20 concern especially persons intending to apply for the registration of rights of common

14 Q What is meant by "rights of common"?

A A right of common is generally taken to mean a right which a person may have (generally *in common with* someone else) to take part of the natural produce of another man's land; for example, a right to the herbage (a right of common of pasture); a right to take tree loppings or gorse, furze, bushes or underwood (a right of estovers); a right to take turf or peat (a right of common of turbary); a right to take fish (a right of common of piscary); a right to turn out pigs to eat acorns and beechmast (pannage). There are various other types of rights of common, some existing only in particular areas, and it is impossible to give a complete list. The Act does not therefore attempt to give a comprehensive definition of the expression "rights of common".

The Act does, however, make it clear that "rights of common" includes cattlegates or beastgates (by whatever name known) and rights of sole or several vesture or herbage or of sole or several pasture, but

does not include rights held for a term of years or from year to year—that is to say it does not include rights which will ultimately come to an end, but only rights of which the ownership is permanently separated from the ownership of the soil.

15 Q *Why should I bother to register my common rights?*

A *Because you will no longer be entitled to the rights if they are not registered under the Act.* (This general rule is subject to two exceptions: first, the very small number of rights of common which are already registered at the Land Registry under the Land Registration Acts, 1925 and 1936, will be preserved even if not registered under the new Act; and second, any rights over land exempted from the registration provisions of the Act will not be affected.)

16 Q I enjoy common rights as the tenant of a farm to which the rights are attached. May both my landlord and myself apply for the common rights to be registered?

A Yes. Each of you may make a separate application if you wish; or only one of you need apply.

17 Q I have not actually used my common rights for some years past. Does this prevent my applying for the rights to be registered?

A Not necessarily. If you have reason to believe that the rights still exist, you should apply.

18 Q I am entitled to turn out on the common 20 sheep *or* 5 cattle. Can I apply for my right to be registered in this way?

A Yes.

19 Q Assuming that the registration of my right (for example, to turn out 50 sheep) becomes final, will the entry in the commons register be legal, conclusive, evidence of my right of common?

A Yes. But the extent of your right may have eventually to be altered under any statutory scheme for the management and improvement of the common which may be introduced.

20 Q I possess rights of common of pasture over "Blackacre Common", together with the right to allow my stock to stray over the adjoining "Whiteacre Common". Will I be able to apply for the registration of my rights over "Whiteacre Common"?

A Yes.

Questions 21-24 concern especially owners of the soil of commons and town or village green

21 Q I own land registered under the Act but my ownership is not registered under the Land Registration Acts 1925 and 1936. Why should I bother to apply for the registration of my ownership under the Act?

A Because where land is established as a town or village green and its owner has not registered and cannot be traced, the land will be vested in the local authority. Unclaimed common land, on the other hand, will be vested in such body or authority as Parliament may decide at a later stage. These vesting arrangements will not however apply if the land is already registered at Land Registry. If you desire to contest the claim that the land is common or a green you should not only register your ownership but lodge an objection as well.

22 Q Will my claim to own a common (or a green) be registered if the land has not been registered under the Act as a common (or a green)?

A No. But you will yourself be able to apply for the registration of the land as a common (or a green) and, at the same time, to apply for your claim to ownership to be registered.

23 Q Will my claim to the ownership of land (assuming that the claim becomes finally registered) constitute evidence of title for purposes other than those of the Act?

A No.

24 Q What is meant by the "owner of the land" for the purpose of the Act?

A The owner is the freeholder. This person is not necessarily the Lord of the Manor.